

EXHIBIT LL

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MARYLAND

- - -
EQUAL EMPLOYMENT :
OPPORTUNITY COMMISSION :
Plaintiff, :
and :
KATHY C. KOCH, :
Plaintiff-Intervenor: :
vs. :
LA WEIGHT LOSS, : NO.
Defendant. : WDQ-02-CV-648

- - -
September 28, 2004
- - -

Oral deposition of JOHN

JANTHOR, taken pursuant to notice, was
held at the Offices of Esquire Deposition
Services, 1880 John F. Kennedy Boulevard,
11th Floor, Philadelphia, Pennsylvania
19103, beginning at 10:35 a.m., on the
above date, before Staci Ackerman, a
Professional Shorthand Reporter and
Notary Public in and for the
Commonwealth of Pennsylvania.

- - -
ESQUIRE DEPOSITION SERVICES
15th Floor
1880 John F. Kennedy Boulevard
Philadelphia, Pennsylvania 19103
(215) 988-9191

JOHN JANTHOR

Page 42	Page 44
<p>1 A. I believe the payroll 2 supervisor was there at that time. Her 3 name is Christine Moffit. 4 Q. And you stated that you 5 don't know what or do you know what 6 record types or fields were used by the 7 PayChoice program in 1997? 8 A. No, I do not. 9 Q. In 1997, did LA Weight Loss 10 maintain computer history files for 11 persons, job changes, salary changes, et 12 cetera? 13 A. No, they did not. 14 Q. Did anyone provide that 15 service for LA Weight Loss? 16 A. No, they did not. 17 Q. In 1997, were reports 18 generated by LA Weight Loss from the 19 Zurich Payroll system? 20 A. I believe there were. 21 Q. What reports? 22 A. That would have been the 23 EEOC report. 24 Q. When you say EEOC report, do</p>	<p>1 Q. The 1997 Zurich Payroll 2 system operated using DOS? 3 A. Yes, it did. 4 Q. And the system was upgraded 5 to what other program, what other 6 operating system? 7 A. Up to Windows system in 8 1999. 9 Q. Prior to the data in the -- 10 the 1997 data housed in the machine 11 becoming inaccessible, what did they 12 contain in 1999? 13 I can rephrase that if you 14 want. 15 A. Please do. 16 Q. You said that in 1999 the 17 Zurich Payroll system contained 1997 18 data? 19 A. In 1999 the '97 data no 20 longer existed in the Zurich system 21 unless they were still an active 22 employee. In other words, all non-active 23 employees from '97 to '99 were purged 24 from the system.</p>
Page 43	Page 45
<p>1 you mean the EEO-1 report? 2 A. Yes. 3 Q. The information that was 4 contained on the Zurich Payroll system 5 within the machine and in the software 6 was maintained by LA Weight Loss until 7 1999? 8 A. It was operated by LA Weight 9 Loss until 1999. 10 Q. Was that information 11 accessible in 1997? 12 A. Yes, it was. 13 Q. Was it accessible in 1998? 14 A. Yes, it was. 15 Q. Was it accessible in 1999? 16 A. In 1999 the information from 17 '97 and '98 was not accessible. 18 Q. What was the cause of that 19 information not becoming accessible? 20 A. The system was upgraded by 21 Zurich from a DOS based system to a 22 Windows based system, at which time all 23 non-active employees, meaning terminated 24 employees, were purged from the system.</p>	<p>1 Q. Purged by who? 2 A. By Zurich. 3 Q. So, the only people who 4 would have been reflected in the system 5 after the purge would have been people 6 who -- the only 1997 people would have 7 been persons who remained active? 8 A. That is correct. 9 Q. Did LA Weight Loss give any 10 instructions to Zurich Payroll when 11 Zurich Payroll purged the system? 12 A. No, they did not. 13 Q. Did LA Weight Loss know that 14 Zurich Payroll was going to purge the 15 system? 16 A. No, they did not. 17 Q. Why didn't it know? 18 A. They were -- the system was 19 maintained by Zurich and I think that 20 there was a lot of trust placed in Zurich 21 and Zurich was the owner of this 22 software. They instructed LA Weight Loss 23 that the system required an upgrade. 24 Zurich scheduled the time, came out and</p>

JOHN JANTHOR

Page 46	Page 48
<p>1 performed the upgrade and informed LA 2 Weight Loss the upgrade was complete. So 3 there were no instructions given by 4 either party as to the contents of the 5 data. 6 Q. Did LA Weight Loss ask 7 Zurich Payroll any questions about the 8 upgrade or the purging of the data? 9 A. No, they did not. 10 Q. Do you know why? 11 A. I believe that there was a 12 great deal of professional trust placed 13 in Zurich, as they were the owners of 14 this software. 15 Q. Did LA Weight Loss in 1999 16 not believe that it had any use for the 17 purged data? 18 MS. KARETNICK: Objection to 19 form. 20 THE WITNESS: I can't answer 21 that. 22 BY MR. ANDERSON: 23 Q. Did any policies exist in 24 1999 to prevent destruction of data?</p>	<p>1 form. 2 You can answer. 3 THE WITNESS: Up to this 4 point in time? 5 BY MR. ANDERSON: 6 Q. When was the first time that 7 LA Weight Loss put policies in place to 8 prevent purges, be informed of purges, et 9 cetera? 10 A. I can't answer that. I 11 don't have that information. 12 Q. The 1997 data is not 13 accessible currently? 14 A. Correct. 15 Q. Is there anything that would 16 make it accessible? 17 A. Not to my knowledge. 18 Q. Is it in anyone's 19 possession? 20 A. No, it is not. 21 Q. In the first quarter of 1997 22 you said that ADP maintained the payroll 23 system at LA Weight Loss? 24 A. Correct.</p>
Page 47	Page 49
<p>1 A. To my knowledge, no, there 2 was none. 3 Q. When did LA Weight Loss 4 learn that the 1997 data had been purged? 5 A. Not until at some point 6 after the purge when they probably went 7 to confirm some data from prior years. 8 MS. KARETNICK: Mr. Janthor, 9 if you're speculating, I would ask 10 that you not speculate. If you 11 don't know the answer to the 12 question, the answer should be, I 13 don't know. 14 THE WITNESS: Yeah, I really 15 don't know. 16 BY MR. ANDERSON: 17 Q. What policies and procedures 18 after the purge were put in place by LA 19 Weight Loss to learn of purges, be 20 consulted about purges -- 21 MS. KARETNICK: Objection. 22 BY MR. ANDERSON: 23 Q. -- and to prevent purges? 24 MS. KARETNICK: Objection to</p>	<p>1 Q. Is that data currently 2 accessible? 3 A. No, it is not. 4 Q. When did it become 5 inaccessible? 6 A. I can't answer that. 7 Q. Who made it inaccessible? 8 MS. KARETNICK: Objection to 9 form. 10 THE WITNESS: I would be 11 speculating. I would imagine that 12 ADP removed the system, any active 13 employees were then moved to the 14 Zurich system, would be how it 15 would typically transfer. 16 BY MR. ANDERSON: 17 Q. In 1998, did LA Weight Loss 18 continue to use Zurich Payroll systems as 19 its payroll administrator? 20 A. Yes, they did. 21 Q. Did it use the same machine 22 that it had used in 1997? 23 A. Yes, it did. 24 Q. Using the same PayChoice</p>

JOHN JANTHOR

<p style="text-align: right;">Page 78</p> <p>1 Q. Does it contain any 2 personnel information? 3 A. Personnel information in the 4 form if somebody received an expense 5 check, it would be a payables check that 6 would be cut out of the system. That 7 would be printed out of the system. 8 Q. The fourth line down it says 9 Oracle? 10 A. Yes. 11 Q. Can you describe what that 12 is? 13 A. We have a -- we are 14 currently in the process of converting 15 from the MAS 200 upgrading to the Oracle 16 financial system. So, the Oracle 17 financial system is replacing the MAS 200 18 system. 19 Q. What about Retailnet? 20 A. Retailnet is a point of 21 sales software application used by our 22 locations, our outlets, the centers. 23 Q. What does it do? 24 A. It's a point of sales</p>	<p style="text-align: right;">Page 80</p> <p>1 Microsoft Office package performs? 2 A. Nothing other than 3 Microsoft. 4 Q. It was a Microsoft product? 5 A. Yes. 6 Q. In 2000, did LA Weight Loss 7 have any machine-readable files that 8 would fit under Paragraphs 1 through 3 of 9 the EEOC's Notice of Deposition other 10 than the Zurich Payroll information? 11 A. No, they did not. 12 Q. At the end of 2000 you said 13 that ADP took over -- 14 A. Correct. 15 Q. -- for Zurich Payroll? 16 A. At the beginning of 2001. 17 Q. Did LA Weight Loss maintain 18 possession of the Zurich Payroll machine 19 and software at that time? 20 A. Yes, they did. 21 Q. Did ADP provide its own 22 machine and software? 23 A. Yes, they did. 24 Q. On site at LA Weight Loss?</p>
<p style="text-align: right;">Page 79</p> <p>1 system. It allows them to sell product, 2 to sell services to our clients. 3 Q. Microsoft Office, what is 4 that software used for by LA Weight Loss? 5 A. It's used by the office 6 staff for word processing, spreadsheets, 7 PowerPoint presentations. So, that is 8 our desktop office automation 9 application. 10 Q. The version currently in use 11 is 2000/2003 or are those two separate 12 versions? 13 A. Those are two separate 14 versions. We are in the process of 15 upgrading to 2003. 16 Q. Has LA Weight Loss always 17 used Microsoft Office? 18 A. Yes, they have. They've 19 always used Microsoft Office. They 20 haven't used any other products. It was 21 installed in the 2000 time frame. 22 Q. Prior to 2000, were there 23 any other software packages that 24 performed the functions that this</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Correct. 2 Q. Did ADP analyze the Zurich 3 Payroll system and its contents prior to 4 becoming LA Weight Loss' payroll 5 administrator? 6 A. I'm not sure what you mean 7 by analyze. 8 Q. The data that was housed in 9 the Zurich Payroll system, how was it 10 transferred to ADP? 11 A. The data, any active 12 employees would have been transferred 13 from the Zurich system over to the ADP 14 system. 15 Q. Did the Zurich Payroll 16 system contain any information about 17 non-active employees? 18 A. The Zurich system maintained 19 information about non-active employees 20 from 1999 until the end of 2000. 21 Q. Prior to 1999, all 22 non-active employees had been purged? 23 A. Correct. 24 Q. What does ADP do for LA</p>

JOHN JANTHOR

Page 86

1 Q. Do you know who would know?
 2 A. Other than Zurich, there's
 3 nobody at LA Weight Loss with that
 4 knowledge.
 5 Q. Is there anyone who formerly
 6 worked at LA Weight Loss who would have
 7 that knowledge?
 8 A. No.
 9 Q. Going back to Plaintiff's
 10 Exhibit 2, Page 4, do you know what
 11 output formats the employee reports can
 12 be generated to, for example, a printer
 13 or some other file?
 14 A. It's my understanding from
 15 what I've seen from these reports that it
 16 allows you to specify an output, meaning
 17 a file or a printer. Specifying it to a
 18 file, it could be saved as an ASCII file
 19 comma separated, whatever preference that
 20 you would have.
 21 Q. If your boss -- who is your
 22 boss, again?
 23 A. I report directly to the
 24 president, Vauhn Karian.

Page 87

1 Q. If Vauhn Karian said to you,
 2 John, I want you to give me a list of all
 3 employees in the Zurich Payroll database
 4 in an Excel format, what would you do?
 5 A. I would go to the system and
 6 go under the Employee Reports, employee
 7 list and attempt to print a master list
 8 and save that to a -- whatever format
 9 file, and open that in Excel.
 10 Q. And you would do the same if
 11 he said I wanted an ASCII?
 12 A. Then I could just save it as
 13 a flat file.
 14 Q. The EEO-1 reports, can you
 15 explain again how those were generated in
 16 1997?
 17 A. It's my understanding that
 18 they were generated through the PayChoice
 19 system.
 20 Q. Do you know how they were
 21 generated?
 22 A. No, I do not.
 23 Q. Do you know who generated
 24 them?

Page 88

1 A. That would have been the
 2 payroll department, Christine Moffit.
 3 Q. Do you know how EEO-1
 4 reports are currently generated?
 5 A. Through the ADP system.
 6 Q. Do you know who generates
 7 them?
 8 A. It would be Christine Moffit
 9 again.
 10 Q. In early 2001 you said that
 11 ADP became the payroll vendor for LA
 12 Weight Loss?
 13 A. Correct.
 14 Q. And did you say that ADP
 15 retrieved the information that it needed
 16 to populate its database from the Zurich
 17 Payroll machine and database --
 18 A. Yes.
 19 Q. -- itself?
 20 A. What they did was they
 21 created the files from the Zurich system
 22 of the active employees and then imported
 23 them into the ADP system.
 24 Q. ADP did not import the

Page 89

1 inactive employees?
 2 A. No, they did not. Those
 3 were maintained through Zurich.
 4 Q. Do you know whether Zurich
 5 and ADP coordinated that effort?
 6 A. No, I do not. My sense was
 7 that from speaking to Chris Moffit that
 8 that was generated by ADP. ADP
 9 facilitated that conversion.
 10 Q. Would ADP have needed
 11 Zurich's cooperation to --
 12 A. I don't believe so.
 13 Q. So, is it fair to say that
 14 if ADP was able to access the information
 15 in the Zurich Payroll database without
 16 the help of Zurich, someone else could do
 17 that?
 18 A. Yeah, through the report
 19 screens here, as we mentioned, generate a
 20 report, output it to a file and then
 21 input it into another system.
 22 Q. In 2001, apart from the ADP
 23 payroll database, did LA Weight Loss have
 24 any machine-readable files that would fit

23 (Pages 86 to 89)

JOHN JANTHOR

Page 94	Page 96
<p>1 THE WITNESS: I got it. 2 MS. KARETNICK: I know 3 Mr. Anderson will do the same. 4 MR. ANDERSON: Thank you, 5 Ms. Karetnick. 6 BY MR. ANDERSON: 7 Q. In 2001, what was the name 8 of the software used by LA Weight Loss in 9 ADP to process payroll information? 10 A. It was the PC Payroll. 11 Q. A version prior to 3.2.2? 12 A. Yes. 13 Q. Do you know who was 14 responsible or is responsible for 15 programming PC Payroll? 16 A. No, I do not. 17 Q. Do you know who would know? 18 A. ADP. 19 Q. PC Payroll was also in 2001 20 the program used to access the data? 21 A. Yes. 22 Q. And ADP, in 2001 -- did ADP 23 in 2001 begin tracking employee 24 information and inactive employees as</p>	<p>1 system, control of it? Who was 2 responsible for that? 3 A. Responsible for what end of 4 it? I'm sorry. 5 Q. If in 2001 someone were to 6 ask LA Weight Loss who knows -- who's 7 responsible for ADP system -- 8 A. That would be -- 9 Q. -- who would that be? 10 A. I'm sorry. I interrupted 11 you again. That would be Christine 12 Moffit. 13 MR. ANDERSON: Is there a 14 reason that Ms. Moffit wasn't 15 designated? 16 MS. KARETNICK: Can we go 17 off the record for a second? 18 - - - 19 (Discussion held off the 20 record.) 21 - - - 22 MR. ANDERSON: It appears to 23 EEOC that the deponent, 24 Mr. Janthor, does not have full</p>
Page 95	Page 97
<p>1 they became inactive starting 2001? 2 A. Yes, they did. 3 Q. How is the information in 4 ADP systems stored? Was it stored 5 directly on the various machines that you 6 mentioned? 7 A. No, it's actually stored on 8 our file server network now. 9 Q. How was it stored in 2001? 10 A. Most likely it would have 11 been on the network at that point in time 12 also. 13 Q. Were backup copies made? 14 A. Yes, there were. 15 Q. When? 16 A. We -- 17 Q. How often? 18 A. We make backups on a nightly 19 basis. We have a three-week rotation of 20 tapes. 21 Q. Backed up to tapes? 22 A. Yes. 23 Q. In 2001, who was responsible 24 for the custody of the ADP payroll</p>	<p>1 knowledge of the matters contained 2 in the Notice of Deposition and 3 that EEOC will reserve the right 4 to -- in consultation with 5 opposing counsel, continue this 6 30(b)6 deposition and designate a 7 Ms. Moffit, who we believe, based 8 on Mr. Janthor's testimony today, 9 does have the information that 10 Mr. Janthor does not have 11 responsive to the Notice of 12 Deposition. 13 MS. QUINLAN: Is that your 14 understanding? 15 MS. KARETNICK: That's our 16 understanding. I would only add 17 the caveat the after receiving 18 this transcript we will obviously 19 go back to Ms. Moffit and confirm 20 that she, in fact, is the person 21 who has this knowledge. Should 22 she not be that person, we will 23 notify the EEOC as to who does 24 have this knowledge, if anyone at</p>

JOHN JANTHOR

Page 98

1 the company, and produce that
2 person either in addition to or
3 instead of Ms. Moffit.

4 MS. QUINLAN: Okay.

5 BY MR. ANDERSON:

6 Q. In 2001, did LA Weight Loss
7 maintain history files in computer form
8 for employees that would show job
9 changes, pay changes, what have you?

10 A. Other than the ADP system?

11 Q. Yes.

12 A. No.

13 Q. Would that information have
14 been on the ADP system as it existed in
15 2001?

16 A. The information that exists
17 on the ADP system in 2001, I can't
18 necessarily speak to the data as it was
19 in 2001. Again, that's -- the payroll
20 system, the actual use of it, would be
21 Ms. Moffit.

22 Q. Would it have included
23 history files, to your knowledge?

24 A. History in regards to prior

Page 99

1 2001?

2 Q. The employment history of
3 persons at LA Weight Loss, job changes,
4 pay changes?

5 A. No. We don't track any
6 changes in the system.

7 Q. Were reports generated in
8 2001 from the ADP system?

9 A. The EEO-1 reports.

10 Q. Who, again, generated those?

11 A. It would have been the
12 payroll department.

13 Q. Is there any data that
14 existed on LA Weight Loss slash ADP
15 payroll system in 2001 that is
16 inaccessible?

17 A. Yes.

18 Q. What data is inaccessible?

19 A. After 2001 and 2002 there
20 was an upgrade to the ADP system as well,
21 to the current version of ADP. And the
22 employees that were existing then, still
23 exist now, but the only way to view those
24 employees is through a Check View. So,

Page 100

1 in other words, if I want to see your
2 information I've actually got to go into
3 a Check View to view the information in
4 the system.

5 Q. What does Check View mean?

6 A. It would be basically going
7 in to look at your check run at that
8 point in time. So, it's going to show
9 the particular data at that point in
10 time.

11 Q. What does check mean? Do
12 you mean the payroll check?

13 A. Yes, yes.

14 Q. Did LA Weight Loss give any
15 instructions to ADP around the time of
16 the conversion?

17 A. No, they didn't.

18 Q. If the data that is
19 inaccessible because of the conversion
20 had remained accessible, apart from Check
21 View, how would it have been accessed?

22 A. There could have been
23 employee master reports run against the
24 data that would have given a more

Page 101

1 detailed view of all the data.

2 Q. Check View does not
3 completely capture all the data?

4 A. That's correct.

5 Q. Have there been any efforts
6 to recover the 2001, 2002 data that's now
7 only accessible in Check View format?

8 A. Not to my knowledge.

9 Q. Have there been any policies
10 or procedures put in place to prevent
11 inaccessibility?

12 A. Yes, there has. ADP has
13 been instructed, upon any further
14 upgrades, that no data is to be purged,
15 destroyed, removed or changed.

16 Q. When was that instruction
17 made?

18 A. After the 2001 upgrade.

19 Q. Do you know when?

20 A. No, I don't.

21 Q. Was it in 2001?

22 A. I believe it was in 2002.

23 Q. I mean 2002?

24 A. After the upgrade was

26 (Pages 98 to 101)